

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

KASHIKA S. SPEED,)	
)	CASE NO. 4:16cv444
Plaintiff,)	
)	
v.)	JUDGE BENITA Y. PEARSON
)	
BEDARD, WARDEN, <i>et al.</i>)	
)	<u>MEMORANDUM OF OPINION AND</u>
Defendants.)	<u>ORDER</u> [Resolving ECF No. 2]

Pro se Plaintiff Kashika S. Speed, a federal inmate at the privately operated Northeast Ohio Correctional Center (“NEOCC”), brings this *in forma pauperis* civil rights action under [42 U.S.C. § 1983](#) against NEOCC Warden Bedard, NEOCC Counselor Dutton, NEOCC Security Officer R. Wyman, and NEOCC Security Chief Yemma. Although unclear, Plaintiff’s Complaint appears to allege as follows: his mail was improperly tampered with and partially confiscated ([ECF No. 1 at PageID #: 7](#)); he was unfairly placed in the Segregated Housing Unit on suspicion of possessing contraband ([ECF No. 1 at PageID #: 9](#)); and Defendant Wyman referred to him in a racially derogatory manner. *Id.*¹ Plaintiff has also moved to proceed *in forma pauperis*. [ECF No. 2](#). For the reasons stated below, Plaintiff’s motion is granted, and this

¹ Plaintiff filed another action against Wyman. See [Speed v. Wyman, et al. No. 4:16CV0439 \(N.D. Ohio filed Feb. 25, 2016\)](#). In that case, Plaintiff also alleges that Wyman referred to him with a racial epithet. That related case is also dismissed without prejudice to any valid state law claim Plaintiff may have under the facts alleged.

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action is dismissed pursuant to [28 U.S.C. § 1915\(e\)](#).

Although pro se pleadings are liberally construed, [Boag v. MacDougall](#), 454 U.S. 364, 365 (1982) (per curiam), the district court is required to dismiss an action under [28 U.S.C. § 1915\(e\)](#) if it fails to state a claim upon which relief can be granted, or if it lacks an arguable basis in law or fact.² [Neitzke v. Williams](#), 490 U.S. 319 (1989); [Hill v. Lappin](#), 630 F.3d 468, 470 (6th Cir. 2010).

A cause of action fails to state a claim upon which relief may be granted when it lacks plausibility in the complaint. [Bell At. Corp. v. Twombly](#), 550 U.S. 544, 564 (2007). A pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” [Ashcroft v. Iqbal](#), 556 U.S. 662, 677–78 (2009). The factual allegations in the pleading must be sufficient to raise the right to relief above the speculative level on the assumption that all the allegations in the complaint are true. [Twombly](#), 550 U.S. at 555. The plaintiff is not required to include detailed factual allegations, but must provide more than “an unadorned, the-defendant-unlawfully-harmed-me accusation.” [Iqbal](#), 556 U.S. at 678. A pleading that offers legal conclusions or a simple recitation of the elements of a cause of action will not meet this pleading standard. [Id.](#)

² An *in forma pauperis* claim may be dismissed *sua sponte*, without prior notice to the plaintiff and without service of process on the defendant, if the court explicitly states that it is invoking [28 U.S.C. § 1915\(e\)](#) [formerly 28 U.S.C. § 1915(d)] and is dismissing the claim for one of the reasons set forth in the statute. [Chase Manhattan Mortg. Corp. v. Smith](#), 507 F.3d 910, 915 (6th Cir. 2007); [Gibson v. R.G. Smith Co.](#), 915 F.2d 260, 261 (6th Cir. 1990); [Harris v. Johnson](#), 784 F.2d 222, 224 (6th Cir. 1986).

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Even if Plaintiff had set forth an otherwise valid claim, it would not be cognizable. In [*Minneeci v. Pollard*, 132 S. Ct. 617 \(2012\)](#), the Supreme Court held that a federal prisoner could not assert a *Bivens*³ claim for deliberate indifference under the Eighth Amendment because California state tort law provided an alternative, existing process capable of protecting the constitutional interests at stake. In so holding, the Court noted it had “found specific authority indicating that state law imposes general tort duties of reasonable care . . . on prison employees in every one of the eight States where privately managed secure federal facilities are currently located,” including Ohio. [*Id.* at 624–25](#). The Court also stated that “where, as here, a federal prisoner seeks damages from privately employed personnel working at a privately operated federal prison, where the conduct allegedly amounts to a violation of the Eighth Amendment, and where that conduct is of a kind that typically falls within the scope of traditional state tort law . . . the prisoner must seek a remedy under state tort law.” [*Id.* at 626](#). Therefore, even construing the Complaint liberally in a light most favorable to Plaintiff, [*Brand v. Motley*, 526 F.3d 921, 924 \(6th Cir. 2008\)](#), it does not state a valid federal claim.

Accordingly, Plaintiff’s motion to proceed *in forma pauperis* ([ECF No. 2](#)) is granted and this action is dismissed under [28 U.S.C. § 1915\(e\)](#). The dismissal is without prejudice to any

³ [*Bivens v. Six Unknown Agents*, 403 U.S. 388 \(1971\)](#).

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valid state law claim Plaintiff may have under the facts alleged. The Court certifies, pursuant to [28 U.S.C. § 1915\(a\)\(3\)](#), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

April 29, 2016
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge